SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 81

JULIAN RILEY AND HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C.T.A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE.

PETITION FOR REHEARING BY JULIAN RILEY AND HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED.

DAN MCDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
AARON FINGER,
Counsel for Petitioners.

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THE NEW YORK TRUST COMPANY, ADMINISTRATOR C.T.A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now Julian Riley and Hughes Spalding, Executors of the Estate of Julia M. Hungerford, Deceased, petitioners in the above-entitled cause, and present this their petition for a rehearing of the above-entitled cause, and in support thereof respectfully show:

I.

It is apparent from both the majority opinion and the concurring opinion that the Court, in affirming the judgment of the court below, did so on the idea that unless this were done the judgment probating the will in Georgia and adjudicating the domicile of the testate would foreclose the right of the State of New York to assert its claim for

taxes which may be lawfully due, without that State having an opportunity to be heard on the question. The Court, we respectfully submit, has overlooked the fact that to give effect to the Georgia judgment in the Delaware proceedings would not in law produce such a result, for that:

(a) The question of the decedent's domicile as regards the claim of New York for inheritance taxes is separate and apart from the issue of the decedent's domicile in the determination of whether or not the probate is to be a general probate. In the former instance the determination of domicile establishes the claim; in the latter instance it establishes the succession.

(b) The tax claimant, not being entitled to be heard on the probate of the will, is not bound by the finding of decedent's domicile in that proceeding. This was the precise ruling in

Tilt v. *Kelsey*, 207 U. S. 43, text 51, 52

citing

Brigham v. *Fayerweather*, 140 Mass. 411; 5 N. E. 265,

and

Dallinger v. *Richardson*, 176 Mass. 77, 57 N. E. 224,

in which the tax claimant was a Massachusetts municipality.

(c) That a tax claimant or creditor is not entitled to be heard on the probate of a will and is not bound by the judgment therein is the statute law of Georgia. This is clear from Code Section 113-602 (R. 16) from which we quote:

> "Probate by the witnesses or probate in solemn form is the proving of the will *after due notice to all the heirs at law.* * * * Such probate is conclusive upon all the parties notified and all the legatees under the will who are represented in the Executor." (Italics ours)

The part we have italicized was not included in the quotation from this Section in the majority opinion (top of p. 7).

(d) The interpleader suit filed by the Executors (¶33 of the petition, R. 92) is consistent only with the viewpoint that the finding of domicile in the probate proceedings was not binding on the State of New York either to defeat its claim or to establish that of the State of Georgia for inheritance taxes.

(e) Throughout the litigation it was freely admitted that neither a tax claimant nor creditor was entitled to be heard on the probate and likewise that the judgment of probate was not binding on the New York Tax Commission as to its claim for inheritance taxes, and so admitted in the brief of respondent in this Court.

(f) Any legal bar to a suit for these taxes in Georgia is not due to the judgment of probate but to the fact that New York would not permit the State of Georgia to sue for taxes in the New York courts. (Respondent's brief, pp. 29 and 30.)

(g) The question in Delaware was not whether the State of New York or its Taxing Commission was entitled to collect estate or inheritance taxes from the representatives of this estate. If such had been the case, no contention would have been made that the Georgia judgment concluded that question adversely to the contentions of New York. The only issue involved was which representative succeeded to the title to the stock as the general or domiciliary representative of the estate. The decree of the Delaware Court was that the respondent had succeeded to the title of Julia M. Hungerford to the shares of stock in controversy by virtue of its appointment as administrator c. t. a., and that the Executors did not succeed to the title

by reason of the probate of the will in Georgia. (R. 237-238).

No effort has been made on the part of the respondents or the taxing authorities of the State of New York, either through the respondents or by direct intervention, to collect inheritance taxes in the Delaware litigation out of the stock in question even though this stock was in the possession of a court of equity with the full powers inherent in this situation. Likewise, there was no effort to establish and collect the claims of New York creditors. In fact, there was no proof that there were any such creditors, and the implication is to the contrary. [See our reply brief, p. 11 (R. 183-184)]

(h) The Delaware Court, in examining the question of decedent's domicile at the instance of the New York Trust Company, as Administrator, c. t. a., denied full faith and credit to the Georgia judgment by reason of the fact that the issue in Delaware involved solely the succession to the decedent's title to the stock in question and that issue turned upon the question as to whether or not the Georgia judgment was a general probate vesting in the Executors title to all the personalty of the estate wherever situated by binding all distributees on the question of the decedent's domicile. The issue in Delaware did not involve the question of the estate's liability to creditors or for taxes. That the Georgia judgment was a general probate was concluded by the decision in *Hungerford* v. *Spalding*, 183 Ga. 547, 550, (R. 108) and the fact that all possible distributees were parties to the Georgia proceedings.

II.

In the majority opinion, the Court, while recognizing the rule that a claimant other than a distributee is not entitled to be heard on the general probate of a will, has

held that an administrator representing such a claimant only may, nevertheless, in another state, challenge the title of the estate representative established in such general probate proceedings. This, we submit, is hardly consistent with the rule that he is not entitled to be heard in the first instance. Heretofore, a tax claimant or creditor has had no interest except in the payment of his claim and consequently his interest, together with that of the distributees, has been fully protected by a general administration, with the additional right of creditors and tax claimants to a limited or local administration where local assets are made available for the payment of local creditors before transfer to the general or domiciliary representative for payment of other creditors and for distribution. In so holding and permitting an administrator who represents only local claimants to go outside the state of his appointment and successfully challenge the title of the executor appointed in a general probate where all persons interested as beneficiaries under the will or heirs at law were before the court, the Court has ignored or overlooked the legal effect of such judgment of probate and the title of the Executors established thereby.

Wilkins v. *Ellett*, 9 Wall. 740 (R. 225).

III.

The effect, we submit, of the majority opinion and the concurring opinion of the court is that, notwithstanding the fact that the general or domiciliary administration has been determined in one State in proceedings to which all the heirs at law and beneficiaries were parties, another State asserting a claim for estate or inheritance taxes or having resident creditors may insist on a general or domiciliary administration under the supervision of its own

courts for the purpose of enabling it to assert there its claim for taxes and to satisfy the claims of resident creditors. That a creditor or tax claimant is entitled to a domiciliary administration to facilitate the payment of his claim is, we submit, a radical departure from principles heretofore recognized in the administration of estates.

The court has overlooked the legal effect of an administration which represents no possible distributees but only creditors and tax claimants. Such an administration cannot be a general administration and is a limited administration only, confined in its operation to the state of its appointment. Any other rule would result in defeating the title of the general representative appointed in proceedings to which all persons interested were parties, and would bring about embarrassment and confusion in the administration of estates.

This Court said, in *Tilt* v. *Kelsey*, 207 U. S. 43, 56:

> "• • • But somewhere the power must exist to decide finally, as against the world, all questions which arise in the settlement of the *succession*. Mistakes may occur and sometimes do occur, but it is better that they should be endured than that, in a vain search for infallibility, questions shall remain open indefinitely. • • •" (Italics ours.)

We submit that the only rights of a claimant, whether an ordinary creditor or taxing authority, have been (1) to have a local administration of local assets for the benefit of local creditors, and (2) to be paid by the domiciliary representative (wherever located) from the assets of the estate before distribution to the heirs or beneficiaries. That he had no right to have a domiciliary administration solely for his benefit has been due to the fact that he was not interested in questions involving the succession and

such rights have been based on the proposition that a claimant's only interest was in being paid the amount of his claim as he had no concern with other matters with which the distributees were interested.

The effect of the court's decision is to create a third type of administration, to-wit, a general administration of a limited nature, under which the estate representative seeks to collect all assets of the estate wherever located, which assets are as in a local administration utilized to pay local or resident creditors (among which we include a tax claimant such as the New York Tax Commission) and the residue remaining transmitted to the general administrator possessing the right to make distribution of the residue to the distributees.

This third type of administration is not necessary for the reason that a state (including the State of New York) may assert its tax claims in direct proceedings without the necessity of a general administration.

On page 8 of the majority opinion is the suggestion that a state has the sovereign right of general administration of a decedent's estate although there are no creditors, distributees, tax claimants or no assets within the state. Such right has not heretofore been recognized.

Tilt v. *Kelsey, supra*, from which we quote (text p. 55):

> "When the owners of property die, that property, under the conditions and restrictions of the law applicable, is transmitted to their successors named by their wills or by the laws regulating inheritance in cases of intestacy. For a suitable time it is essential that the property should remain under the control of the State, until all just charges against it can be discovered and paid, and those entitled to it as new owners can be ascertained. It is in the public interest that the property should come under the control of the new

owners, after such delays only as will afford opportunity for investigation and hearing to guard against mistake, injustice or fraud. It is the duty of the sovereign to provide a tribunal, under whose direction the just demands against the estate may be determined and paid, the succession decreed, and the estate devolved to those who are found to be entitled to it."

We submit that any other rule would result in embarrassment and confusion in the administration of estates. Such a right is certainly not recognized by the courts of the State of New York. When the State of Connecticut, through a "general representative" sought to obtain assets in the hands of a New York estate representative, for the sole purpose of exacting inheritance taxes, the application was denied by New York even though it was admitted that decedent was a resident of Connecticut and the taxes were due.

In re Martin's Estate, 240 N. Y. S. 393, affirmed 174 N. E. 753.

IV.

While the court in its decision in this case recognizes the effect of a general probate where all of the property is within the jurisdiction of the court, it has overlooked the rule that the same result follows where all of the distributees are before the court. We submit that the latter is the ruling announced in *Baker* v. *Baker, Eccles & Company*, 242 U. S. 394. We quote from the text (p. 400):

"How is the fact of decedent's domicile to be judicially ascertained as a step in determining what law is to govern the distribution? Obviously, if fundamental principles of justice are to be observed, the ascertainment must be according to due process of law, that is, either by a proceeding *in rem* in a court having

control of the estate, or by a proceeding *in personam* after service of process upon the parties to be affected by the judgment."

This is true because in both instances all possible distributees are bound by the judgment and in neither instance are creditors or tax claimants bound because they are not entitled to be heard as their rights are not in issue. *Tilt* v. *Kelsey, supra.*

The issue of domicile in establishing a claim for inheritance or estate taxes is a collateral issue to that of the issue of domicile in establishing the place and the fact of domiciliary administration. This is so because of the difference in the results which follow from the determination of domicile in the two classes of cases. In the former, liability for estate or inheritance taxes is established, while in the latter the title of the estate representative to all personalty wherever situated is determined together with the law applicable to the distribution of the estate. This is the precise ruling of this Court in *Tilt* v. *Kelsey, supra,* where a will was probated in New Jersey as that of a resident and New York sought to collect inheritance taxes on the basis that the testate was a resident of New York. We quote (text 51):

> "In the consideration of this question, the first inquiry which presents itself is whether the adjudication of the New Jersey court, that Tilt was at the time of his death a resident of New Jersey, was conclusive upon the State of New York, a stranger to the proceedings. If it was that is the end of the case, because then New York could not take the first step necessary to bring the estate within the provision of the tax law of that State. But upon principle and authority that adjudication, *though essential to the assumption of juris-*

diction to grant letters testamentary, was neither conclusive on the question of domicil, nor even evidence of it in a *collateral* proceeding." (Italics ours.)

We respectfully submit that while there may be contradictory findings as to the domicile of a decedent in determining whether the probate or administration is general or not, yet wherever such conflict has occurred it has been at the instance of a distributee who was not bound by the other adjudication or at the instance of a personal representative of such distributee, and in all instances where the persons relying upon these conflicting adjudications were brought before the court, the question of the nature of the administration was finally determined. We respectfully submit that the same result follows in law where all of the persons interested in the succession are before the court in the first instance.

In no instance has a creditor been permitted to raise either in the first instance or by collateral attack the question as to whether or not the probate or the administration was a general probate or a general administration. Likewise, no case cited has held that a creditor or claimant was bound by such adjudication of domicile in the determination of the fact, amount or rank of his claim.

We respectfully submit that the Delaware Court, when it examined the question of decedent's domicile at the instance of the New York Trust Company as Administrator, c. t. a., who represented only possible New York creditors and a tax claimant, failed to give full faith and credit to the Georgia judgment because that judgment determined the succession and the succession was not involved in the validity or amount of the claim represented by the New York Trust Company as Administrator, c. t. a. The Delaware Court should first have determined the legal effect of the Georgia judgment of probate in the light of the fact that

all possible distributees were parties thereto and bound thereby, as did this Court in *Tilt* v. *Kelsey*, and it would then have found that regardless of whether or not that judgment of general probate be a proceeding *in rem* or a proceeding *in personam*, it established the title of the Executors which neither a creditor or tax claimant or any stranger not entitled to be heard in that proceeding could dispute, and likewise that the finding of domicile in that proceeding would not in either instance have concluded such a person on the issue of domicile if it were material to any claim against the estate. Had the Delaware Court done this, it would have recognized the established title of the Executors to the stock and that the New York Tax Commission and any New York creditor were free to establish their right to collect their respective claims, *but they could not dispute the title of the Executors.* In this connection, we again quote from *Tilt* v. *Kelsey* (text 52) in which the Court quoted from *Brigham* v. *Fayerweather:*

> "* * * We may lay on one side, then any argument based on the misleading expression that all the world are parties to a proceeding *in rem*. This does not mean that all the world are entitled to be heard, and as strangers in interest are not entitled to be heard, there is no reason why they should be bound by the findings of fact, although bound to admit the title or status which the judgment establishes."

The Court then said:

> "We think that this quotation expresses the correct rule and that it is sustained by the decisions of this court. Applying it here, it follows that the full faith and credit due to the proceedings of the New Jersey court do not require that the courts of New York shall be bound by its adjudication on the question of domicil. On the contrary, it is open to the courts of any State in the trial of a collateral issue to determine upon the evidence produced the true domicil of the deceased."

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this petition for rehearing be granted and that the judgment of the Supreme Court of Delaware be upon further consideration reversed.

Respectfully submitted,

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I, Dan MacDougald, of counsel for the above-named petitioners, do certify that the foregoing petition for rehearing in this cause is presented in good faith and not for delay.

Respectfully submitted,

DAN MACDOUGALD.

SUPREME COURT OF THE UNITED STATES.

No. 81.—October Term, 1941.

Julian Riley and Hughes Spalding, Executors of the Estate of Julia M. Hungerford, Deceased, Petitioners,
vs.
The New York Trust Company, Administrator C. T. A. of the Estate of Julia M. Hungerford, Deceased, et al.

On Writ of Certiorari to the Supreme Court of the State of Delaware.

[February 16, 1942.]

Mr. Justice Reed delivered the opinion of the Court.

Coca-Cola International Corporation, incorporated in Delaware, filed a bill of interpleader in a Delaware Court of Chancery against Julian Riley and Hughes Spalding, petitioners here, the Executors of Mrs. Julia M. Hungerford, with letters testamentary issued by the Court of Ordinary of Fulton County, Georgia, and against The New York Trust Company, the respondent, a New York corporation, as temporary administrator (afterward administrator c. t. a.) of the same decedent, appointed by the Surrogate's Court for New York County, New York.

The Georgia executors and the New York administrator each claim the right to have transferred to them in their representative capacity stock in the Coca-Cola corporation now on its books in the name of the decedent. The outstanding certificates are in Georgia in the hands of the Georgia executors. The parties are agreed, and it is therefore assumed that Delaware is the situs of the stock. In accordance with the prayer of the bill, the Delaware court directed the adversary claimants to interplead between themselves as to their respective claims.

The Georgia executors assert that original domiciliary probate of Mrs. Hungerford's will in solemn form was obtained by them in Georgia with all beneficiaries and heirs at law of testatr[illegible], including her husband, Robert Hungerford, actual parties by personal service. These, it is conceded, were all the parties under the law of Georgia entitled to be heard on the probate of the will. The re-

spondent administrator c.t.a. was not a party. The record of probate includes a determination by special finding, over the objection of the caveator, the husband, that the testatrix was domiciled in Georgia. The special finding was specifically approved as an essential fact to determine the jurisdiction of the Court of Ordinary by the highest court of Georgia in its affirmance of the probate. *Hungerford* v. *Spalding*, 183 Ga. 547, 189 S. E. 2.

These facts were alleged by petitioners in their statement of claim to the stock filed below in response to the decree of interpleader. Exemplified copies of the probate record of the several Georgia courts were pleaded and proven as were the applicable Georgia statutes governing domiciliary probate. From the facts alleged, petitioners inferred the conclusive establishment of the place for domiciliary distribution against "all persons" and prayed the issue to them of new certificates. An offer was made to pay all Delaware taxes or charges on the stock. At the trial petitioners relied upon Article IV, Section 1, of the Federal Constitution,[1] the full faith and credit clause, as determinative of their right to the new certificates. The pleading and trial contention adequately raised the Constitutional question. *Tilt* v. *Kelsey*, 207 U. S. 43, 50.

Respondent admitted that all parties entitled under the law of Georgia to be heard in opposition to probate were actually before the Georgia courts. It denied that Mrs. Hungerford was domiciled in Georgia or that the Georgia judgment of domicile and probate was binding on it, and averred testatrix' domicile at death was New York. It further averred that there were New York creditors of the estate interested in the proper and lawful administration of the estate, and that New York had certain claims for inheritance and estate taxes. Its own subsequent appointment by the Surrogate's Court of New York County, New York, on the suggestion of testatrix' husband and the State Tax Commission, was pleaded with applicable provisions of New York probate and estate tax law. By stipulation it was established that petitioners and the heirs and beneficiaries of testatrix, except her husband who was an actual party, were notified of the New York proceedings for probate only by publication or substituted service of the citation in

[1] "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Georgia and did not appear. As a domiciliary administrator c.t.a. the respondent prayed the issue to it of new certificates for the stock in controversy.

The trial court concluded from the evidence adduced at the hearings that the testatrix was domiciled in Georgia. It was therefore, as the court stated, unnecessary for it to consider the binding effect of the Georgia judgment.[2] The Supreme Court of Delaware reversed this finding of fact, determined that New York was testatrix' domicile and denied petitioners' contention that Article IV, Section 1, of the Constitution required the award of the certificates of stock to the Georgia executors. The Coca-Cola Corporation was directed to issue its stock certificate to the respondent, the New York administrator c. t. a. *New York Trust Co.* v. *Riley*, 16 A. 2d 772. Because of the importance of issues previously undecided by this Court, certiorari was granted to review the alleged error, to wit, the asserted denial of full faith and credit to the Georgia judgment. — U. S. —.

The constitutional effect of the Georgia decree on a claim in his own name in another state by a party to the Georgia proceedings is not here involved.[3] The question we are to decide is whether this Georgia judgment on domicile conclusively establishes the right of the Georgia executors to demand delivery to them of personal assets of their testatrix which another state is willing to surrender to the domiciliary personal representative[4] when another representative, appointed by a third state, asserts a similar domiciliary right. For the purpose of this review the conclusion of Delaware that the testatrix was in fact domiciled in New York is accepted. The answer to the question lies in the extent to which Article IV, Section 1, of the Constitution, as made applicable by R. S. § 905,[5] nevertheless controls Delaware's action.

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2 Coca-Cola International Corp. v. New York Trust Co., 2 A. 2d 290, 8 A. 2d 517.

3 The Supreme Court of Delaware was of this opinion. It said: We are not "called upon to consider the operation of a judgment in a probate proceeding in one jurisdiction as an estoppel against one who, although a party to that proceeding, undertakes, in a proceeding in another jurisdiction affecting the same decedent's estate, to raise again the question of the decedent's domicile." 16 A. 2d 772, 788.

4 Cf. Page, Wills (3d Ed.) § 727.

5 "And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken." 28 U. S. C. § 687.

This clause of the Constitution brings to our Union a useful means for ending litigation. Matters once decided between adverse parties in any state or territory are at rest. Were it not for this full faith and credit provision, so far as the Constitution controls the matter, adversaries could wage again their legal battles whenever they met in other jurisdictions. Each state could control its own courts but itself could not project the effect of its decisions beyond its own boundaries. Cf. *Pennoyer* v. *Neff*, 95 U. S. 714, 722. That clause compels that controversies be stilled so that where a state court has jurisdiction of the parties and subject matter, its judgment controls in other states to the same extent as it does in the state where rendered. *Roche* v. *McDonald*, 275 U. S. 449, 451. This is true even though the cause of action merged in the judgment could not have been enforced in the state wherein the enforcement of the judgment is sought. *Christmas* v. *Russell*, 5 Wall. 290, 302; *Fauntleroy* v. *Lum*, 210 U. S. 230, 236.[6] By the Constitutional provision for full faith and credit, the local doctrines of *res judicata*, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here.

The Constitution does not require, *M'Elmoyle* v. *Cohen*, 13 Peters 312, 328; *Milwaukee County* v. *White Co.*, 296 U. S. 268, 276, nor does Delaware provide that the judgments of Georgia have the force of those of her own courts. A suit in Delaware must precede any local remedy on the Georgia judgment. Subject to the Constitutional requirements, Delaware's decisions are based on Delaware jurisprudence. Her sovereignty determines personal and property rights within her territory. Subject to Constitutional limitations, it was her prerogative to distribute the property located in Delaware or to direct its transmission to the domiciliary representative of the deceased. *Iowa* v. *Slimmer*, 248 U. S. 115, 121. The full faith and credit clause allows Delaware in disposing of local assets to determine the question of domicile anew for any interested party who is not bound by participation in the Georgia proceeding. *Thormann* v. *Frame*, 176 U. S. 350, 356; *Overby* v. *Gordon*, 177 U. S. 214, 227; *Burbank* v. *Ernst*, 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 400. It must be admitted that this reexamination may result in conflicting decisions upon domicile.

[6] There are limitations on the generality of the statement. Pacific Ins. Co. v. Comm'n, 306 U. S. 493, 502, and cases there cited.

but that is an inevitable consequence of the existing federal system which endows its citizens with the freedom to choose the state or states within which they desire to carry on business, enjoy their leisure or establish their residences. *Worcester County Co.* v. *Riley*, 302 U. S. 292, 299.[7] But while allowing Delaware to determine domicile for itself, where any interested party is not bound by the Georgia proceedings, the full faith and credit clause and R. S. § 905, note 5, *supra*, do require that Delaware shall give Georgia judgments such faith and credit "as they have by law or usage" in Georgia.

We note but need not discuss at length the respondent's contention that our application of Georgia law is limited to the statutes, decisions and usages of that state pleaded or proven in the Delaware proceedings[8] and that for such further rules of law as may be needed to reach a conclusion here, we must necessarily, in reviewing a Delaware judgment, rely upon the law which, in the absence of proof of other Georgia law, properly guided the state courts, that is the Delaware law.[9] At any rate, the cases relied upon by petitioners to establish the Georgia law, *Tant* v. *Wigfall*, 65 Ga. 412, and *Wash* v. *Dickson*, 147 Ga. 540, 94 S. E. 1009, are cited in the opinion of the Supreme Court of Georgia pleaded in these proceed-

[7] A collection of cases dealing with this topic may be found in 121 A. L. R. 1200.

[8] Adam v. Saenger, 303 U. S. 59, 62, 63; Gasquet v. Lapeyre, 242 U. S. 367; Tilt v. Kelsey, 207 U. S. 43, 57; Chicago and Alton R. R. Co. v. Wiggins Ferry Co., 119 U. S. 615, 622; Hanley v. Donoghue, 116 U. S. 1, 6.

Del. Rev. Code (1935) § 4695—"Statutes of Other States:—Printed copies of Statutes of any other of the United States, if purporting to be published under the authority of their respective governments, or if commonly admitted and read as evidence in their courts, shall be prima facie evidence of such law."

Del. Rev. Code (1935) § 4696—"Common Law of Other States:—The common, or unwritten, law of any other of the United States, may be proved as facts by parole evidence; and the reports of cases adjudged in their courts, and published by authority, may also be admitted as evidence of such law."

In 1899 the Superior Court clearly stated the rule: "It is a general rule of law that whenever a foreign statute is relied upon it must be pleaded, and this court will not take judicial notice of the laws of our sister states or of a foreign country." Thomas v. Grand Trunk Railway Co., 1 Pennewill 593, 596, 42 A. 987, 988. This rule has been quite strictly applied in subsequent cases. Wolf v. Kragy, 3 W. W. Harr. 362, 136 A. 520 (Super. Ct. 1927); Mackenzie v. Omar, 4 W. W. Harr. 435, 154 A. 883 (Super. Ct. 1929); Nye v. Felton, 5 W. W. Harr. 236, 162 A. 504 (Super. Ct. 1931); Royal Ins. Co. v. Simon, 20 Del. Ch. 297, 174 A. 444 (1934); Holland v. Univ. Life Co., 7 W. W. Harr. 39, 180 A. 328 (Super. Ct. 1935); Silverman v. National Assets Corp., 12 A. 2d 389 (Del. Ch. 1940).

[9] Bource v. Trust Francais, 14 Del. Ch. 332, 127 A. 56. Of this law, we take judicial knowledge. Owings v. Hull, 9 Pet. 607, 624; Bowen v. Johnston, 306 U. S. 19, 23.

ings. We think they may be considered by us under the Delaware law. No objection below was made by respondent to the citations. The opinion of the Georgia Supreme Court was properly in the record and, in the absence of a contrary ruling by Delaware, we are of the view that they may be properly considered here.[10]

We find nothing in either of these cases, however, which would lead to the conclusion that in Georgia, the New York administrator c. t. a. was in privity, so far as the sequestration of assets for the payment of death taxes or indebtedness of decedent or her estate is concerned, with any parties before the Georgia court, or that the New York representative could not take steps in Georgia courts which might result in its getting possession of any assets which under the Georgia law of administration would be properly deliverable to a foreign domiciliary administrator. In the *Tant* case, Georgia refused to permit a collateral attack on a judgment of probate allegedly entered without jurisdiction of the subject matter. It was held that such attack must be made in the court where judgment was rendered. The effect of a judgment entered without jurisdiction of the persons whose rights were purportedly affected was not discussed. In the *Wash* case, there was simply a ruling that a judgment of the court of ordinary could not be collaterally attacked by parties or privies, unless the record negatived the existence of necessary "jurisdictional facts." Whom the court would classify as "privies" to a judgment *in personam* does not appear, and the opinion of the court below makes it amply plain that there was no privity under Delaware law. Hence, if the Georgia judgment is to bind the New York administrator, it can be considered to do so only *in rem*.

By Section 113-602, Georgia Code of 1933, set up by petitioner as a basis for his contention as to the finality of the Georgia judgment in Delaware, it is provided that the Court of Ordinary is given exclusive jurisdiction over the probate of wills and that

[10] Cf. Elsner v. United American Utilities, Inc., 21 Del. Ch. 73, 75, 180 A. 589, 590, affirmed 12 A. 2d 389,—

"On the brief filed by the solicitog for the claimant there are quotations from *sections* 181, 208 and 209 of the *New York Tax Law*. Whether these sections are a part of *article* 9 (*section* 180 *et seq.*) or of *article* 9-A (*section* 208 *et seq.*) of the statute referred to in the notice of claim, I do not know. No point has been made by the solicitors for the receivers to the effect that the New York statute has not been properly pleaded and introduced in evidence. I shall assume then that the quotations in the brief filed in behalf of the State of New York are correct extracts from the New York statute and that by tacit agreement they may be considered as though they were properly in the record."

"such probate is conclusive upon all the parties notified, and all the legatees under the will who are represented in the executor." All the parties entitled to be heard in opposition to the probate, including Mr. Hungerford, were actually before the Court of Ordinary. It may be assumed that the judgment of probate and domicile is a judgment *in rem* and therefore as "an act of the sovereign power," "its effects cannot be disputed" within the jurisdiction.[11] But this does not bar litigation anew by a stranger of facts upon which the decree *in rem* is based.[12] Hence it cannot be said, we think, that because respondent would have no standing in Georgia to contest the probate of a will and, we assume, the preliminary determination of domicile, held necessary in *Hungerford* v. *Spalding*, 183 Ga. 547, 550, 189 S. E. 2, 3, thereafter respondent could not file a claim in Delaware, dependent upon domiciliary representation of testatrix, for assets in the latter state. While the Georgia judgment is to have the same faith and credit in Delaware as it does in Georgia, that requirement does not give the Georgia judgment extra-territorial effect upon assets in other states. So far as the assets in Georgia are concerned the Georgia judgment of probate is *in rem*; so far as it affects personalty beyond the state, it is *in personam* and can bind only parties thereto or their privies. This is the result of the ruling in *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 400.[13] Phrased somewhat differently,

[11] See Brigham v. Fayerweather, 140 Mass. 411, 412. The Georgia Supreme Court intimated in one of the other cases cited in the *Hungerford* opinion that if a person was not heard in probate because of a supposed lack of interest, but was in fact interested, he would not be bound by the probate decree. Wetter v. Habersham, 60 Ga. 193, 202; cf. Young v. Holloway, [1895] P. 87; Estate of Seaman, 51 Cal. App. 409, 196 Pac. 928.

[12] Cf. Brigham v. Fayerweather, 140 Mass. 411, 413; Tilt v. Kelsey, 207 U. S. 43, 51-53; Luke v. Hill, 137 Ga. 159, 161-62, 73 S. E. 345, 346.

[13] Illustrative state cases.
A will is admitted to original domiciliary probate in state *A*. Thereafter an ancillary proceeding is commenced in state *B* based upon the domiciliary determination of *A*. At that point a beneficiary, a stranger to the proceeding in *A*, appears and asserts that the decedent was domiciled in *B*. The determination of domicile by state *A* will not be recognized by state *B*, but state *B* will take evidence and redetermine the issue of domicile. Estate of Clark, 148 Cal. 108, 82 P. 760; Holyoke v. Estate of Holyoke, 110 Me. 469, 87 A. 30 (semble); In re Mauldin's Estate, 69 Mont. 132, 220 P. 1102 (semble); Strathmann v. Kinkelaar, 105 Okla. 290, 233 P. 215 (semble); Richards v. Huff, 146 Okla. 108, 293 P. 1028; cf. Estate of Reynolds, 217 Cal. 557, 20 P. 2d 323; In re Coppock's Estate, 72 Mont. 431, 234 P. 258; Matter of Gifford, 279 N. Y. 470, 18 N. E. 2d 663; McEwen v. McEwen, 59 N. Dak. 662, 197 N. W. 862. *Contra*, Corrigan v. Jones, 14 Colo. 311, 23 P. 913; Kurtz v. Stenger, 109 Md. 554, 182 A. 456.
If the objector was privy to the proceeding in state *A*, state *B* will not redetermine the issue of domicile. Willetts' Appeal, 50 Conn. 330; Torrey v.

if the effect of a probate decree in Georgia *in personam* was to bar a stranger to the decree from later asserting his rights, such a holding would deny procedural due process.

It seems quite obvious that the administrator c. t. a. appears in Delaware as an agency of the State of New York, and not as the alter ego of the beneficiaries of the Hungerford estate. In its answer to the petitioners' statement of claim it established its status by alleging that not merely the beneficiaries but creditors residing in New York and the State of New York were interested in the estate, that its appointment as temporary administrator had been sought by the New York Tax Commissioner "to protect the claim of the State of New York to inheritance and succession taxes," that the State of New York was asserting such claims in substantial amount on the theory that the domicile was New York, and that under New York law, as evidenced by statutes likewise pleaded, an administrator was "vested by law with the right to possession and control over and to exercise all manner of dominion over all of the goods and chattels and personal property of every kind and description of the estate of a decedent."

A state is interested primarily not in the payment of particular creditors, nor in the succession of heirs or beneficiaries, as such, but in the administration of the property of its citizens, wherever located, and that of strangers within its boundaries. In a society where inheritance is an important social concept, the managing of decedents' property is a sovereign right which may not be readily frustrated.

Georgia and New York might each assert its right to administer the estates of its domiciliaries to protect its sovereign interests and Delaware was free to decide for itself which claimant is entitled to receive the portion of Mrs. Hungerford's personalty within Delaware's borders.

Affirmed.

Bruner, 60 Fla. 365, 53 So. 337; Loewenthal v. Mandell, 125 Fla. 685, 170 So. 169; Succession of Gaines, 45 La. Ann. 1237, 14 So. 234.

Where the proceeding in state *B* is by a stranger to the proceedings for original domiciliary probate in state *A* upon the theory that the domicile is actually *B*, state *B* will determine domicile for itself. Scripps v. Wayne Probate Judge, 131 Mich. 265, 90 N. W. 1061; In re Crane's Estate, 205 Mich. 673, 172 N. W. 584; Pusey's Estate, 321 Pa. 248, 184 A. 844; see Matter of Horton, 217 N. Y. 363, 371, 111 N. E. 1066, 1068.

Where the person seeking to establish domicile in state *B*, and to have original domiciliary probate there, was a party to the proceeding in state of state *B* will not redetermine domicile. Hopper v. Nicholas, 106 Ohio 292, 140 N. E. 186; cf. Thomas, Jr. v. Morriscit, 76 Ga. 384; In re Fischer, 118 N. J. Eq. 599, 180 A. 633.

Mr. Chief Justice STONE.

I concur upon the single ground that the New York administrator was not bound by the Georgia judgment. He was not a party to the Georgia proceedings, nor was he represented by any of those who were parties. As administrator appointed under the New York statutes he was charged with the duty of administering the estate of the decedent and paying inheritance taxes upon it. His interest so far as he owes duties to the state is therefore adverse to that of the husband and the next of kin, who alone were parties to the Georgia proceeding. To have bound him by representation of those so adverse in interest would have been a denial of due process. *Hansberry* v. *Lee*, 311 U. S. 32. A judgment so obtained is not entitled to full faith and credit with respect to those not parties. *Pink* v. *A. A. A. Highway Express*, 314 U. S. —; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394; *Blodgett* v. *Silberman*, 277 U. S. 1, 18. Any other conclusion would foreclose New York from litigating its right to collect taxes lawfully due, by the simple expedient of a probate by the next of kin of the will of the decedent as the domiciled resident of another state, without notice to any representative of New York or opportunity to be heard.

It is unnecessary to consider the other questions discussed by the opinion.

Mr. Justice FRANKFURTER and Mr. Justice JACKSON concur in this opinion.